

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JIMCY MCGIRT,

Plaintiff,

v.

RICK WHITTEN, Warden, et al.,

Defendants.

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Case No. CIV-20-157-D

**ORDER**

Plaintiff, who appears *pro se*, filed a “Petition for Writ of Prohibition/Mandamus” in the District Court of Oklahoma County challenging a policy of the Oklahoma Department of Corrections regarding the display of religious items. Defendants removed the action to this Court [Doc. No. 1] on February 24, 2020. Defendants filed a Motion to Dismiss [Doc. No. 11], to which Plaintiff responded [Doc. No. 23] and Defendants replied [Doc. No. 26].

This matter was referred to United States Magistrate Judge Suzanne Mitchell pursuant to 28 U.S.C. § 636(b)(1)(B). On November 23, 2020, Judge Suzanne Mitchell issued her Report and Recommendation [Doc. No. 36]. Judge Mitchell recommended Plaintiff’s claims against Defendants in their official capacity under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) be dismissed with prejudice for lack of jurisdiction. Judge Mitchell also recommended Plaintiff’s RLUIPA claims against Defendants in their individual capacity be dismissed for failure to state a valid claim.

Further, Judge Mitchell recommended that Plaintiff's claims under the Oklahoma Religious Freedom Act ("ORFA") be remanded to state court.

In his Objection, timely filed on December 14, 2020 [Doc. No. 37], Plaintiff presents no persuasive argument or authority that would cause this Court to reject Judge Mitchell's conclusions. In fact, Plaintiff agrees with the magistrate judge's findings.

The Court has reviewed the entirety of the Report and Recommendation, as well as the case record, and fully concurs in the Report and Recommendation. Therefore, the Court, having conducted a de novo review,<sup>1</sup> finds that Plaintiff's objection should be overruled, and hereby ADOPTS the Report and Recommendation [Doc. No. 36] in its entirety.

**IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss [Doc. No. 11] is GRANTED IN PART as set forth herein. Plaintiff's RLUIPA claims against Defendants in their official capacity are DISMISSED WITH PREJUDICE for lack of jurisdiction. Plaintiff's RLUIPA claims against Defendants in their individual capacity are DISMISSED WITH PREJUDICE for failure to state a claim. A separate judgment shall be entered accordingly.

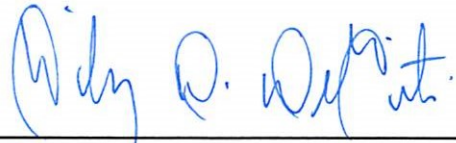
**IT IS FURTHER ORDERED** that Plaintiff's ORFA claims are remanded to the District Court of Oklahoma County, Oklahoma.

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<sup>1</sup> Pursuant to Rule 72, where the district court refers dispositive matters to a magistrate judge for a report and recommendation, the district court "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *Birch v. Polaris Indus., Inc.*, 812 F.3d 1238, 1246 (10th Cir. 2015).

**IT IS FURTHER ORDERED** that the pending motions [Doc. Nos. 19, 20, 27] are DENIED AS MOOT.

**IT IS SO ORDERED** this 22<sup>nd</sup> day of December, 2020.



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TIMOTHY D. DeGIUSTI  
Chief United States District Judge